SIX EXAMPLES APPLYING THE META-PRINCIPLE LINGUISTIC METHOD: LESSONS FOR INDIGENOUS LAW IMPLEMENTATION

Naiomi Metallic*

Abstract

Building on "Five Linguistic Methods for Revitalizing Indigenous Laws," this article explains and analyses six examples of implementation of the 'meta-principle' or 'word-bundle' linguistic method for Indigenous law revitalization. The method refers to using a word in an Indigenous language that conveys an overarching, normative principle of the Indigenous group, and is the most utilized form of the five linguistic methods to date. The examples span its use by judges, public governments as well as Indigenous governments, and these actors employ different methods for identifying and interpreting the meta-principles. The variations between them reveal four categories of approaches to identifying, interpreting and implementing meta-principles: (1) inherent knowledge of decision-maker; (2) in-court evidence; (3) official ratification; and (4) advisory bodies. There are different benefits and challenges associated with each category, and there are several lessons we can take from studying them. These examples and the categories show us that communities and their governments have real options, and precedents, to not only begin to revive their laws, but also to put them into practice. Introduction

This paper builds on my article, "Five Linguistic Methods for Revitalizing Indigenous Laws", where I identify and give illustrations of five distinct ways that Indigenous languages can be analyzed to draw out Indigenous law.[1] In that article, I propose and explain that there are at least five linguistic methods for Indigenous law revitalization, namely: 1) the "Meta-principle" method; 2) the "Grammar as revealing worldview" method; 3) the 'Word-part' method; 4) the "Word-clusters" method; and 5) the "Place names" method. Essentially, these methods are different ways to look at Indigenous languages to see how Indigenous groups think about and organize the world around them, and they can be revealing of values, principles and rules within an Indigenous group's legal order.

* Associate Professor and Chancellor's Chair of Aboriginal Law and Policy at the Schulich School of Law, Dalhousie University

[1] Naiomi Metallic, "Five Linguistic Methods for Revitalizing Indigenous Laws," [forthcoming in McGill LJ (2022)].

In this article, I focus specifically on the meta-principle linguistic method. The method entails using a word in an Indigenous language that conveys an overarching, normative principle of the Indigenous group that can be used as an interpretive prism through which to assess other laws, rules, actions or decisions, or to inform the creation of new rules or decisions.[2] Métis elder and scholar, Maria Campbell, described this idea as "[e]ach word is a bundle," meaning that each word is a bundle with teachings and tools to draw on.[3] The meta-principle (or "word-bundle") method is, by far, the most well-recognized and utilized form of the five linguistic methods. As the examples in this article show, its use in different contexts teaches that various approaches can be taken to identify, interpret and implement the meta-principle method. For this reason, the meta-principle method deserves particular study to help Indigenous communities appreciate the different ways to implement it.

Through these two articles, my aim is to make a modest contribution to the ground-breaking writing on Indigenous law revitalization that has happening for the past decade.[4] Referred to as the "Indigenous law renaissance"[5], Indigenous law scholars have been writing about the various resources, methods and frameworks to support Indigenous nations and communities in drawing out their laws.[6] This includes describing ways to find law in Indigenous stories, ceremonies, songs, the knowledge and experience of elders and other community members, the land and more.[7] While

---

[2] *Ibid.*

[3] Maria Campbell shared this idea at a gathering of Indigenous scholars who form the Prairie Relationality Network in a gathering at the Banff Centre, Banff, Alberta, in Fall, 2019. Elder Campbell raised this specifically to address the issue of lack of fluency. She said rather than waiting for everyone to become fluent before drawing on the language, a lot can be learned by seeing each word as a bundle with teachings and tools to draw on. It makes it more accessible to a broader number of people in the community. My thanks to Hadley Friedland for sharing the knowledge gained from Elder Campbell with me.

[4] "Indigenous law" refers to the specific legal orders of Indigenous peoples, as distinct from "Aboriginal law" which refers to Canadian laws in relation to Indigenous peoples, for example, s 35 of the *Constitution Act, 1867* and s 91(24) of the *Constitution Act, 1867*, as well as legislation relating to Indigenous peoples, such as the *Indian Act*, RSC 1985, c I-5, as well numerous other federal and some provincial statutes. In this article I will be using the umbrella term "Indigenous peoples" which includes First Nations, Inuit and Métis people, unless the context calls for identifying a particular Indigenous nation (e.g. Mìgmaq, Cree, etc.).

[5] See Val Napoleon & Hadley Friedland, "Indigenous Legal Traditions: Roots to Renaissance" in Markus D Dubber & Tatjana Hörnle, eds, *The Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2014).

[6] "Drawing out law" is a phrase frequently used by Indigenous law scholars to refer to the act of identifying values, principles and rules from a variety of sources (e.g., stories, language, observations from nature and ceremonies, etc.) through processes of analysis and interpretation (methods). See e.g. Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11:1 Indigenous LJ 1 at 19–21 [Friedland, "Reflective Frameworks"]; John Borrows, *Drawing Out Law: A Spirit Guide* (Toronto: University of Toronto Press, 2010).

[7] See e.g. John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) [Borrows, *Canada's Indigenous Constitution*]; Hadley Friedland & Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015) 1:1 Lakehead LJ 33 [Friedland & Napoleon, "Gathering the Threads"]; Darcy Lindberg, "Miyo

there has been some writing to-date from scholars in this field on the use of language to reveal Indigenous laws,[8] there is room for more. My articles seek to add to the analytical tools and examples available to Indigenous communities in using their languages to both draw out and implement their laws.

This paper is in two parts. In Part 1, I unpack six different examples of the implementation of the meta-principle method, each varying to some degree from the other. The variations are based on who identifies and interprets the meta-principle and how (e.g., what informs their identification and interpretation). In Part 2, I classify the examples into four categories of approaches to identify, interpret and implement meta-principles: (1) inherent knowledge of decision-maker; (2) in-court evidence; (3) official ratification; and (4) advisory bodies. I also discuss benefits and challenges of each implementation approach. This is intended to give Indigenous communities and governments an informed picture of what some of their options for Indigenous law implementation may include in relation to the meta-principle method. The implementation approaches discussed also shed light on opportunities and challenges in Indigenous law implementation more generally, both within Indigenous communities as well as within the Canadian legal system.

Part 1: Six Examples of Meta-Principle Implementation

Here I review six examples of implementation of the meta-principle linguistic approach. One is from a tribal court in the United States, and the rest are from Canada. Of the Canadian examples, one is from the territorial court in Nunavut, another from the government of Nunavut, another from the government of Nova Scotia, and the remaining two are from Indigenous governments. As noted earlier, each example varies to some extent from the others in terms of who identified and/or interpreted the meta-principle, and what informed their choices. To assist in navigating these variances, I provide the following summary table of the examples:

Examples	Who identified the principle?	Who interprets the principle?	What is the interpretation based on?
Navajo Nation v Rodriguez **(Navajo Nation - US)**	Tribal judges fluent in language	Tribal judges fluent in language	Inherent knowledge

Nêhiyâwiwin (Beautiful Creeness) Ceremonial Aesthetics and Nêhiyaw Legal Pedagogy" (2018) 16/17 Indigenous LJ 51; Kerry Sloan, "Dancing the Nation" (2021) 1:1 Rooted 17; Eva Ottawa, *Wactenamakanicic e opikihakaniwitc - Comment se manifeste le « droit » coutumier en matière de circulation des enfants chez les Atikamekw Nehirowisiwok de Manawan?* (LLM Thesis, University of Ottawa, Civil Law Section, 2021) [unpublished]; Sarah Morales, "Stl'ul nup: Legal Landscapes of the Hul'Qumi'um Mustimuhw" (2016) 33 Windsor YB Access Just 103.

[8] See Mathew Fletcher, "Rethinking Customary Law in Tribal Court Jurisprudence" (2006) Michigan J Race & L 57. See also Tuma Young, "L'nuwita'simk: A Foundational Worldview for a L'nuwey Justice System" (2015) 13 Indigenous LJ 75; Lindsay Keegitah Borrows, *Otter's Journey through Indigenous Languages and Law* (Vancouver, British Columbia: UBC Press, 2018).

***R. v Itturiligaq* + (NU)**	NU judges	NU judges	Inherent knowledge **Held to be in error by Court of Appeal – evidence or advice from Inuit on meaning of Inuit Qaujimajatuqangit to community needed*
***Wildlife Act* + (NU)**	GN government, based on significant Inuit engagement over Inuit Qaujimajatuqangit, including identification and description of principles	NU government and public servants (NU judges)	Definition within the law; descriptions within government documents and statements; and Advisory panels
***Sustainable Development Goals Act* (NS)**	NS Legislature **Not clear whether this was with Mìgmaq involvement*	NS government and public servants (NS judges)	Definition within the law
***Lobster Law* (Listuguj Mi'gmaq First Nation (LMG), QC)**	LMG, following analysis of community engagement	Listuguj law oversight board (made up of community members)	Definition within the law; and The oversight board's knowledge and Mìgmaq custom
7 Cree Principles (Aseniwuche Winewak Nation (AWN), AB)	Aseniwuche Elders Council and leadership identified. Elaboration based on community interviews and synthesis, followed by adoption by AWN.	Members and employees of AWN government	Analysis of interviews; and Handouts with summary of analysis

1. Navajo Nation v Rodriguez (Navajo Nation - US)

This example comes from US Anishinaabe tribal judge, Matthew Fletcher, one of the first Indigenous law scholars to focus on the use of Indigenous languages to draw out Indigenous law. Fletcher relied on philosopher H.L.A. Hart's theory of primary and secondary rules to explain the meta-principle method.[9] Hart conceived of "primary rules of obligation" as non-optional duties or obligations that are part of a group's customs or traditions.[10] Secondary rules are rules of "recognition", which Hart explained as procedural rules for deciding such things as when and how rules can be

[9] Fletcher, *supra* note 8.

[10] *Ibid* at 63, referencing HLA Hart, *The Concept of Law*, (Oxford: Oxford University Press, 1961).

passed, when a rule has been broken, and how disputes will be adjudicated.[11] Using the case *Navajo Nation v Rodriguez* from the Navajo Nation Supreme Court in 2004[12] as his main example, Fletcher proposed that a tribal court judge would identify "an important and fundamental value signified by a word or phrase in the tribal language" (e.g., a primary rule), and next apply that value to an Anglo-American or intertribal secondary rule in order to "harmonize these outside rules to the tribe's customs and traditions."[13]

The issue before the tribal judge in *Navajo Nation v Rodriguez* was whether the Navajo's *Bill of Rights* required the tribe's police force to inform suspects taken into custody of their right to remain silent and right to a lawyer (in the United States this is called a "*Miranda* warning"). The *Bill of Rights* protected suspects from being "compelled… to be a witness against themselves", but the question was whether this extended to *Miranda*-type protections. To resolve this question, the tribal judge, who was from the nation and spoke the language, drew upon the Navajo concept of *Hazhó'ógo*, which the judge described as a fundamental tenet of how the Navajo approach each other as individuals and relatives, serving as a reminder that patience and respect are due to all.[14] Based on this principle, the judge held that tribal police had an obligation pursuant to *Hazhó'ógo* to give suspects the equivalent of *Miranda* warnings.

Fletcher praised this case as a practical method for introducing "customary law into the modern era" in an incremental way and "without creating much additional confusion as to the application of the law."[15] The identity of the tribal judge as a member of the nation and a fluent speaker of the language is suggested by Fletcher to be important factors to the success of this approach, particularly language fluency, which Fletcher acknowledges is rare even among tribal judges. However, Fletcher also suggests that a tribal judge who is a member of a nation, but not a fluent speaker, could also apply primary rules.[16]

2. R v Itturiligaq + (NU)

The application of the meta-principle approach is starting to be seen in a growing number of cases from Nunavut. By way of context, it is important to note that the creation of Nunavut as a Canadian territory was the result of land claim negotiations between Inuit in what was then the Northwest Territories, represented by the Inuit

[11] Fletcher, *supra* note 8 at 63–64.

[12] *Navajo Nation v Rodriguez*, SC-CR-03-04, 11 (Navajo 2004) cited and discussed in Fletcher, *supra* note 8 at 72–75.

[13] Fletcher, *supra* note 8 at 94.

[14] Navajo courts are required to take the "Fundamental laws of the Diné [Navajo]" into consideration when interpreting Navajo statutory law (*ibid* at 18).

[15] *Ibid* at 42.

[16] *Ibid* at 21, 28, 30, 42.

Tapirisat of Canada (ITC), and Canada. As part of these negotiations, the ITC opted for the creation of a public government as a new territory as opposed to Indigenous self-government. In part, this decision was motivated by the reasoning that since the Inuit represented 85% of the territory's population, this arrangement would still effectively allow Inuit control over decision-making in the territory.[17]

Early into the life of the new territory, an Inuit-led organization, the Nunavut Social Development Council (NSDC), was created to implement Inuit values, culture, and traditions in the operations of the Nunavut government. In 1998, the NSDC brought together elders from all of Nunavut's communities to identify "processes designed to ensure that Inuit culture, language, and values are democratically reflected in the policies, programs, and day-to-day operations of the new Nunavut government."[18] During the conference, the term *Inuit Qaujimajatuqangit* (IQ) was introduced as a way to "replace and broaden the limited connotations usually attached to the term Inuit Traditional Knowledge."[19] IQ was defined as "all aspects of traditional Inuit culture including values, world-view, language, social organization, knowledge, life skills, perceptions and expectations."[20] Further meetings and workshops with Inuit knowledge-holders would identify and document a number of Inuit language concepts informing IQ.[21] All departments of the Nunavut Government and Inuit organizations created pursuant to the land claim are expected to implement IQ. Some departments have developed their own IQ policies.[22]

Several statutes of the Nunavut Government explicitly incorporate IQ, which will be discussed further in the next section. Interestingly, the majority of cases considering IQ in the courts to date have not been under the statutes that explicitly incorporate IQ. Rather, Nunavut judges have started to apply these principles even without explicit statutory instructions to do so, treating such principles as generally relevant to the interpretation of law in the territory. A growing area where we have started to see application of IQ principles has been in criminal law cases involving Inuit offenders. To date, there have been six decisions from the Nunavut Court of

---

[17] Francis Levesque, "Revisiting Inuit Qaujimajatuqangit: Inuit knowledge, culture, language, and values in Nunavut institutions since 1999" (2014) 38:1-2 Études/Inuit/Studies 115 at 118.

[18] *Ibid* at 121.

[19] *Ibid*.

[20] *Ibid*.

[21] *Ibid* at 122–23. See also Shirley Tagalik, "Inuit Qaujimajatuqangit: The role of Indigenous knowledge in supporting wellness in Inuit communities in Nunavut" (2009–2010), online (pdf): *National Collaborating Centre for Aboriginal Health* <www.ccnsa-nccah.ca/docs/health/FS-InuitQaujimajatuqangitWellnessNunavut-Tagalik-EN.pdf> [perma.cc/K3AR-TKFD] (describing how Inuit elders have been documenting Inuit worldview and IQ).

[22] Levesque, *supra* note 17 at 123. See also Thomas Wilhelm Ahlfors, "Challenges related to the incorporation of Inuit Qaujimajatuqangit into legislation" (2018) 1 J Commonwealth Assoc Legislative Counsel 63 at 68.

Justice (NCJ), all penned by Justice Bychok, that incorporate IQ and traditional concepts of Inuit justice.[23]

While linking the jurisdiction to apply Inuit justice principles in criminal cases to the directions of the Supreme Court in *R v Gladue*,[24] Justice Bychok, has gone beyond this to suggest that IQ is relevant in all proceedings in the territory:

> I have written extensively concerning Gladue sentencing principles in the context of sentencing Nunavummiut. More than 86% of Nunavut's population is Inuit. Inuit social governance runs parallel to the application of pan-Canadian legal norms. Therefore, the norms of Inuit Qaujimajatuqangit must be considered at every stage of civil and criminal proceedings in the Nunavut Court of Justice. This includes at a pre-trial bail – or show cause – hearing.[25]

While the Nunavut Court of Appeal (NUCA) overturned Justice Bychok's decision on IQ in *R v Itturiligaq* (where the judge found that a mandatory minimum criminal sentence was unconstitutional) the panel did not question the application of IQ to the criminal sentencing context more generally, and in fact noted, "[t]here is undoubtedly an important intersection between Inuit Qaujimajatuqangit and Canadian criminal law rules and processes."[26] Further, in a decision from Nunavut's Privacy Commission under the *Access to Information and Protection of Privacy Act* (containing no explicit mention of IQ),[27] the Commissioner expressed the importance of considering IQ principles in deciding such matters.[28] These are positive developments for the recognition of Inuit law in Nunavut, and for Indigenous law within Canada more broadly.

In some of his decisions Justice Bychok has referenced the traditional Inuit practice of banishment when a person threatens group safety and security to support his finding for custodial sentences.[29] In another case, he took into account Inuit

---

[23] *R v Mikijuk*, 2017 NUCJ 2 at paras 17, 46 [*Mikijuk*] (sentencing); *R v Anugaa*, 2018 NUCJ 2 at paras 37–44 [*Anugaa*] (applied for stay of prosecution); *R v Itturiligaq*, 2018 NUCJ 31 at paras 62–63, 70, 86, 106–124 [*Itturiligaq* NUCJ] (sentencing and *Charter* challenge to statutory minimums); *R v Jaypoody*, 2018 NUCJ 36 at paras 75, 97–99 [*Jaypoody*] (bail application); *R v Arnaquq*, 2020 NUCJ 14 at paras 54–56 [*Arnaquq*] (sentencing); *R v Iqalukjuaq*, 2020 NUCJ 15 at paras 15, 39 [*Iqalukjuaq*] (sentencing).

[24] *Anugaa*, *supra* note 23 at 42; *Itturiligaq* NUCJ, *supra* note 23 at paras 106, 118; *Jaypoody*, *supra* note 23 at 99.

[25] *Jaypoody*, *supra* note 23 at para 75; see also *Mikijuk*, *supra* note 23 at 46 [emphasis added].

[26] *R v Itturiligaq*, 2020 NUCA 6 at para 75 [*Itturiligaq* NUCA].

[27] *Access to Information and Protection of Privacy Act*, CSNu, c.A-20.

[28] *Department of Human Resources (Re)*, 2021 NUIPC 14 [*Department of Human Resources (Re)*]. The decision was in relation to a policy of the Nunavut government to entirely redact employee reference checks before disclosing these to employees. As noted further below, however, the Privacy Commission felt constrained from applying IQ principles in the matter before him given the evidentiary record. The challenges surrounding this will be explored further in Part 2.

[29] *Mikijuk*, *supra* note 23 at para 46; *Arnaquq*, *supra* note 23 at paras 54–55; *Iqalukjuaq*, *supra* note 23 at paras 15, 39.

seasonal land use and hunting practices in considering whether there had been unreasonable delay in prosecuting an offence.[30] In *R v Itturiligaq*, Bychok J emphasized the principles of forgiveness, reconciliation, reintegration, restitution and understanding, as well as group cohesion, as part of IQ, to support his conclusion that a custodial, mandatory four-year sentence to be served in a federal penitentiary outside Nunavut violated the accused's *Charter* right not to be subjected to cruel and unusual punishment.[31] In all of these decisions, it appears that Justice Bychok relied on his own inherent knowledge of IQ when identifying and applying its principles. Justice Bychok does not identify as Inuk or having fluency in Inuit, but his biography on the NCJ's website notes that he worked as a prosecutor for Public Prosecution Services Canada in Nunavut for over 12 years, working in every one of Nunavut's 25 hamlets and that he "worked very hard to develop an understanding of Inuit culture and traditions as well as a sensitivity to Inuit traditional legal norms."[32]

The NUCA overturned Justice Bychok's decision in *R v Itturiligaq* that the mandatory minimum sentence violated Mr. Itturiligaq's *Charter* rights, finding that the Justice Bychok both overemphasized and underemphasized important considerations in his reasoning. With respect to his application of IQ principles, the Court of Appeal found that he overemphasized the importance of Inuit social justice concepts in respect of the "forgiveness" factor and failed to consider how the Inuit community in question might equally support a longer custodial sentence to send a strong message of not tolerating domestic violence and gun violence as a part of IQ.[33] The offender in the case had pleaded guilty to discharging a firearm in the direction of a home where his wife was visiting, having been angry at her refusal to come home, as well as hitting her with the gun when she reluctantly decided to return home.

Ultimately, the Court of Appeal found that the lack of evidence to support the trial judge's interpretation of IQ in the circumstances to be in error:

> … In light of the paucity of evidence as to how, when and in what circumstances Inuit Qaujimajatuqangit might have weighed in on any one, or all, of the mitigating and aggravating factors identified, including the domestic violence context, the sentencing judge was wrong to place mitigating emphasis on the bare, but unexplored, fact that this victim was prepared to continue associating with Mr. Itturiligaq. Simply put, there was no evidence to suggest that Inuit Qaujimajatuqangit would place any less emphasis on denunciation and deterrence than Parliament or the Criminal Code, or that Inuit Qaujimajatuqangit would invariably treat as mitigating what the victim said. On these matters, no one asked for the advice of the

[30] *Anugaa*, *supra* note 23 at paras 43–44.

[31] *Itturiligaq* NUCJ, *supra* note 23 at paras 86, 106–109, 116–124; *Canadian Charter of Rights and Freedoms*, s 12, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*].

[32] Nuvanut Court of Justice, "The Judiciary", online: *Nunavut Courts* <www.nunavutcourts.ca/index.php/judiciary-nucj> [perma.cc/KVE5-XWMN].

[33] *Itturiligaq* NUCA, *supra* note 26 at paras 75–79.

> Inuit community, or for direct evidence from those tasked with interpreting and applying Inuit Qaujimajatuqangit.[34]

In a decision of the Privacy Commissioner of Nunavut, where the Commissioner stated it was important to consider IQ in the circumstances, the Commissioner noted the NUCA decision in *R v Itturiligaq* and the need for an evidentiary record on IQ. As a result, he suggested he could not apply IQ in the circumstances:

> In the present case, I have no evidence about Inuit Qaujimajatuqangit before me. I take heed of the Court of Appeal's warning in *Itturiligaq* not to overreach. I hope in future cases to develop the evidentiary record from which we might be able to learn how Inuit Qaujimajatuqangit can help in the exercise of interpreting and applying the ATIPPA. That will require the active participation of public bodies individually, and the GN more generally through the Department of Executive and Intergovernmental Affairs, which has overall responsibility for the administration of the ATIPPA.[35]

Despite this conclusion, the Commissioner noted that "Inuit Piqqusingginnik (Inuit societal values) is another concept with possible application to the case. Inuit societal values overlap with Inuit Qaujimajatuqangit but they are not the same."[36] He then noted that he could consider a vision document prepared by the Legislative Assembly setting out Inuit societal values (which were also incorporated into a government Human Resources Manual),[37] identifying the values relevant to the matter at hand. Considering these, as well as commitments of the Nunavut government to have a more representative public service, the Commissioner recommended that the government rethink its approach to redacting reference checks before providing these to employees for reasons of transparency and accountability of referees.[38]

---

[34] *Ibid* at para 78 [emphasis added].

[35] *Department of Human Resources (Re), supra* note 28 at para 79.

[36] *Ibid* at para 80.

[37] *Ibid* at paras 82–84.

[38] Nunavut continues to be challenged with meeting its commitment to have its public service representative of its Inuit population (further discussion on this will be found at note 60, *below*). Here, the job applicant was Inuk and the redaction made it impossible for him to understand why he was unsuccessful for the job competition. As noted by the Privacy Commissioner he had no obvious employment history that would explain the negative reference, and he was left no knowing how he could change or do things differently to improve his changes in future competition: *Department of Human Resources (Re), supra* note 28 at paras 86–93.

3. Wildlife Act + (NU)

As noted above, several statutes of the Nunavut Government explicitly incorporate IQ.[39] This incorporation has drawn upon the knowledge of Inuit elders and knowledge-holders, including documents produced in workshops and meetings with elders detailing definitions and descriptions of IQ. The government's Department of Culture and Heritage has an Inuit Qaujimajatuqangit Division that coordinates the development of IQ and Inuit Societal Values initiatives across government.[40] The Division works with the Inuit Qaujimajatuqangit Katimajiit, a non-governmental advisory body, that acts as a resource to all departments on their IQ initiatives.[41]

For illustration, I will focus on the *Wildlife Act*, passed in 2003.[42] IQ is identified as one of 10 values that must inform the fulfillment of the purpose of the *Act*:

> **Values**
>
> (2) To fulfill its purpose, this Act is intended to uphold the following values:
> …
> (f) the guiding principles and concepts of Inuit Qaujimajatuqangit are important to the management of wildlife and habitat and should be described and made an integral part of this Act;[43]

IQ is defined in the *Act* as meaning "traditional Inuit values, knowledge, behaviour, perceptions and expectations."[44] All persons and bodies performing functions under this Act and the courts are directed to interpret and apply this Act in accordance with the purpose, values and principles of the Act.[45] At section 8, a number of IQ principles are identified as applicable under the *Act*:

---

[39] There are currently nine (9): *Legislative Assembly and Executive Council Act*, SNu 2002, c 5; *Nunavut Elections Act*, SNu 2002, c 17; *Human Rights Act*, SNu 2003, c 12; *Wildlife Act*, SNu 2003, c 26; *Family Abuse Intervention Act*, SNu 2006, c 18; *Education Act*, SNu 2008, c 15; *Official Languages Act*, SNu 2008, c 10; *Inuit Language Protection Act*, SNu 2008, c 17; *Plebiscite Act*, SNu 2013, c 25.

[40] Inuit Quajimajatuqangit Division, Department of Culture and Heritage, "Inuit Qaujimajatuqangit", online: *Government of Nunavut* <www.gov.nu.ca/culture-and-heritage/information/inuit-qaujimajatuqangit> [perma.cc/8QCM-KLL7].

[41] Inuit Quajimajatuqangit Division, Department of Culture and Heritage, "Inuit Qaujimajatuqangit Katimajiit: Terms of Reference" (3 January 2017), online (pdf): *Government of Nunavut* <www.gov.nu.ca/sites/default/files/2017-01-03-tor_-call_for_nomination_iq-eng-logo-x.pdf> [perma.cc/39ED-E3Z8].

[42] *Wildlife Act*, *supra* note 39.

[43] *Ibid*, s 1(2)(f). The purpose of the *Wildlife Act* is to "establish a comprehensive regime for the management of wildlife and habitat in Nunavut, including the conservation, protection and recovery of species at risk, in a manner that implements provisions of the Nunavut Land Claims Agreement respecting wildlife, habitat and the rights of Inuit in relation to wildlife and habitat" (*ibid*, s 1(1)).

[44] *Ibid*, s 2. Many of the other NU statutes do not define IQ.

[45] *Ibid*, s 3(1).

8. The following guiding principles and concepts of *Inuit Qaujimajatuqangit* apply under this Act:

(a) *Pijitsirniq/Ihumaliukti*, which means that a person with the power to make decisions must exercise that power to serve the people to whom he or she is responsible;
(b) *Papattiniq/Munakhinik*, which means the obligation of guardianship or stewardship that a person may owe in relation to something that does not belong to the person;
(c) *Aajiiqatigiingniq/Pitiakatigiiklotik*, which means that people who wish to resolve important matters or any differences of interest must treat each other with respect and discuss them in a meaningful way, keeping in mind that just because a person is silent does not necessarily mean he or she agrees;
(d) *Pilimmaksarniq/Ayoikyumikatakhimanik*, which means that skills must be improved and maintained through experience and practice;
(e) *Piliriqatigiingniq/Havakatigiiklutik*, which means that people must work together in harmony to achieve a common purpose;
(f) *Avatimik Kamattiarniq/Amiginik Avatimik*, which means that people are stewards of the environment and must treat all of nature holistically and with respect, because humans, wildlife and habitat are inter-connected and each person's actions and intentions towards everything else have consequences, for good or ill;
(g) *Qanuqtuurunnarniq/Kaujimatukanut*, which means the ability to be creative and flexible and to improvise with whatever is at hand to achieve a purpose or solve a problem;
(h) *Qaujimanilik/Ihumatuyuk*, which means a person who is recognized by the community as having in-depth knowledge of a subject;
(i) *Surattittailimaniq/Hugattittailimanik*, also called *Iksinnaittailimaniq/Ikhinnaittailimanik*, which means that hunters should hunt only what is necessary for their needs and not waste the wildlife they hunt;
(j) *Iliijaqsuittailiniq/Kimaitailinik*, which means that, even though wild animals are harvested for food and other purposes, malice towards them is prohibited;
(k) *Sirliqsaaqtittittailiniq/Naklihaaktitihuiluhi*, which means that hunters should avoid causing wild animals unnecessary suffering when harvesting them;
(l) *Akiraqtuutijariaqanginniq Nirjutiit Pijjutigillugit/Hangiaguikluhi Nekyutit InuupPiutigingitait*, which means that wildlife and habitat are not possessions and so hunters should avoid disputes over the wildlife they harvest or the areas in which they harvest them; and
(m) *Ikpigusuttiarniq Nirjutilimaanik/Pitiaklugit nekyutit*, which means that all wildlife should be treated respectfully.[46]

[46] *Ibid*, s 8.

Section 9 contains seven subsections that identify how specific actors under the *Act* must carry out certain principles in the exercise of their functions. To give two examples:

> *Pijitsirniq/Ihumaliukti*
> 9. (1) The Government of Nunavut, the NWMB, the NSRC, every RWO and HTO and every conservation officer and wildlife guardian must follow the principle of *Pijitsirniq/Ihumaliukti* [s 8(a)] when performing their functions under this Act.
>
> *Papattiniq/Munakhinik*
> (2) Although the principle of *Papattiniq/Munakhinik* traditionally applied to objects rather than to living things, because the Government of Nunavut and the NWMB have responsibilities to conserve wildlife, they must endeavour to apply the principle of *Papattiniq/Munakhinik* [s 8(b)] to wildlife and habitat and conserve these resources for future generations of Nunavummiut…[47]

Beyond this, the *Act* also provides that the Minister is required to appoint an advisory committee of elders to review methods and technologies of harvesting wildlife in the context of IQ and advise the Minister on those it considers safe and humane.[48] The Minister is also empowered to support and implement suitable programs of education and training respecting IQ.[49] Finally, the *Act* directs that the Inuit language may be used to interpret the meaning of guiding principles or concepts of IQ.[50]

The presence of IQ within the *Act* has only been referenced once in the courts to date. In *Government of Nunavut (Attorney General and Minister of Environment) v Arctic Kingdom Inc.*, the Nunavut Court of Justice relied on IQ as part of a contextual interpretation of the *Wildlife Act* to conclude that the *Act* did not impose a licensing requirement on Inuit hunters for subsistence hunting on Crown lands.[51] This is the only case so far to comment on the inclusion of IQ in a Nunavut statute.

---

[47] *Ibid*, s 9.

[48] *Ibid*, s 160. An example of a similar advisory committee can be found in Nunavut's recently passed *Corrections Act*, which creates an Inuit Societal Values Committee, made up mostly of members from outside the correctional system, who hears submissions and suggestions for incorporating Inuit societal values into corrections programming: *Corrections Act*, SNu 2019 c 13, ss 59, 61–64.

[49] *Wildlife Act*, *supra* note 39, s 149(d).

[50] *Ibid*, s 3(2).

[51] *Government of Nunavut (Attorney General and Minister of Environment) v Arctic Kingdom Inc.*, 2019 NUCJ 10. This was a constitutional challenge, brought by an outdoor tour operating company, to the licensing regime set up under the *Wildlife Act*, *supra* note 39. The company argued, among other things, that the *Act* prohibited Inuit from hunting for food without a licence in contravention of the land claim agreement and the *Nunavut Act*, SC 1993, c 28.

In addition (and similar to its approach to IQ), some Nunavut statutes explicitly list and require respect of "Inuit societal values" in the interpretation and execution of statutory duties.[52] For example, s 2(2) and (3) of the *Child and Family Services Act* requires that

> **Inuit societal values**
>
> (2) This Act shall be administered and interpreted in accordance with the following Inuit societal values:
>
> (a) *Inuuqatigiitsiarniq* (respecting others, relationships and caring for people);
> (b) *Tunnganarniq* (fostering good spirit by being open, welcoming and inclusive);
> (c) *Pijitsirniq* (serving and providing for family or community, or both);
> (d) *Aajiiqatigiinniq* (decision making through discussion and consensus);
> (e) *Piliriqatigiinniq* or *Ikajuqtigiinniq* (working together for a common cause); and
> (f) *Qanuqtuurniq* (being innovative and resourceful).
>
> **Other Inuit societal values**
>
> (3) In addition to the Inuit societal values named in subsection (2), the following Inuit societal values may be used or incorporated in the administration or interpretation of this Act:
>
> (a) *Inunguqsainiq* (nurturing or raising an individual to be a productive member of society);
> (b) *Inuttiavaunasuaqniq* (working towards a good or problem-free life);
> (c) *Piijutingani qiniriaquqtugu* (the importance of assessing and addressing the root cause of undesirable behaviour or circumstances).[53]

In one reported case to date, Justice Bychok drew on two of these principles (*Inuuqatigiitsiarniq* and *Pijitsirniq*) in interpreting the *Child and Family Services Act*, to aid in his conclusion that the *Act* gave him the power to make temporary supervision orders in favour of parents despite ambiguity in the *Act* in this regard.[54]

A non-Inuk legislative drafter working for the Government of Nunavut, Thomas Ahlfors, has written about the challenges of incorporating IQ and its related

---

[52] See *Child and Family Services Act*, SNWT (Nu) 1997, c 13; *Education Act*, *supra* note 39; *Representative for Children and Youth Act*, SNu 2013, c 27; *Public Service Act*, SNu 2013, c 26; *Public Health Act*, SNu 2016, c 13; *Unlawful Property Forfeiture Act*, SNu 2017, c 14.

[53] *Child and Family Services Act*, *supra* note 52, ss 2(2)–(3).

[54] *Director of Child and Family Services v AM and NN*, 2018 NUCJ 22 at para 26.

principles into statutes and explaining these in English.[55] He speaks at some length about the truncation of meaning in expressing Inuit principles in English given the broadness of the meaning of IQ.[56] While there is merit to such a concern, as I have argued in "Five Linguistic Methods for Revitalizing Indigenous Laws," there is a risk of loss of meaning when working with English interpretations of Indigenous concepts as part of law revitalization. However, the alternative—not engaging at all—is worse.[57]

Ahlfors also raises the problem of how providing definitions of IQ and relevant principles in an *Act* can limit decision-makers' interpretive powers.[58] An interesting counterpoint to this, however, which suggests that judges do not necessarily feel bound just to the expression of IQ or Inuit societal values expressed within a statute, is *S (J) v Nunavut (Minister of Health and Social Services)*.[59] In this case, a judge reached beyond the Inuit social values referenced in the *Children and Family Services Act* and applied an IQ principle that was referenced and explained in a Government of Nunavut publication (*Pinasuaqtavut*: providing for those who are not able to care for themselves).[60]

Ahlfors further raises concerns that presenting IQ and Inuit societal values as broad overarching principles that inform the exercise of functions and duties in the rest of the statute can be unclear for those without significant cultural knowledge or the time and resources to learn how to make their actions or decisions accord with such principles.[61] On this, he provides the example of Nunavut's *Education Act*, which was criticized by some for including too many requirements to fulfilling statutory duties in accordance with IQ that were felt to be vague and difficult for educators and administrators to implement.[62] As a result of such complaints, Nunavut's Legislature

---

[55] Ahlfors, *supra* note 22.

[56] *Ibid* at 68–69.

[57] Metallic, *supra* note 1.

[58] Ahlfors, *supra* note 22 at 70.

[59] *S (J) v Nunavut (Minister of Health and Social Services*), 2006 NUCJ 20 at paras 21, 49–53 [*S (J)*].

[60] They were used to inform a finding that a distinction in treatment between children under 16 and those between 16 and 18 in *Children and Family Services Act*, *supra* note 50, violated the *Charter*, *supra* note 31, s 15.

[61] This concern seems to reflect the reality that, despite commitments by Government of Nunavut and Canada to ensure the public service in Nunavut is representative of Inuk, much of the public service jobs, especially the upper echelon of decision-makers, are non-Inuk. For an article about the difference having Inuk in leadership can make, particularly in education, see Shelley Tulloch et al, "Inuit principals and the changing context of bilingual

education in Nunavut" (2016) 40:1 Inuit Studies 189.

[62] Ahlfors, *supra* note 22 at 68–70. See also Nunavut, Special Committee to Review the Education Act, *Final Report*, 4 (November 2015) (Co-Chairs: George Hickes and Simeon Mikkungwak).

amended the *Education Act* to scale back references to IQ.[63] However, the general statement that public education in Nunavut shall be based on Inuit societal values and IQ, as well as elucidation and definition of relevant principles, remains in Part 1 of the *Education Act*. In general, for greater predictability and certainty, Ahlfors recommends a drafting approach that spells out precisely what IQ requires in a given context:

> Ideally, policies would be developed in such a way that the requirements of Inuit Qaujimajatuqangit are seamlessly built into them. This would mean that simply by following the rule set out in legislation, the requirements of Inuit Qaujimajatuqangit would be met; there would be no need to refer to Inuit Qaujimajatuqangit directly, as the law would inherently be compatible with Inuit Qaujimajatuqangit.[64]

He recognizes, however, that such "seamless incorporation" might not always be possible, because some situations may need to be analyzed on a case-by-case basis for compatibility with IQ, or because the requirements of IQ with respect to a certain subject matter may not be sufficiently clear or known to policy officials.[65] Some have argued, contrary to Ahlfors, that the absence of a clear definition of IQ can be positive, creating "sites of struggle over words and meaning" leading to co-management and assessment panels to decide for themselves the meaning of IQ, as opposed to requiring Inuit to compromise from the start on the meaning of words to appease Western development interests.[66] While John Borrows, an Anishnaabe Indigenous law scholar, generally reminds us that any legal system can benefit from giving greater attention to the intelligibility of principles, he also notes that "what may be unintelligible to those inexperienced with Indigenous culture may be quite intelligible to those familiar with it. A Eurocentric approach to legal interpretation must not be allowed to undermine Indigenous legal traditions."[67]

Ahlfors may also be overemphasizing the extent to which a society's normative principles can be distilled and codified into precise rules in advance. The law is not only made up of "black letter rules." As I explained in "Five Linguistic Methods for Revitalizing Indigenous Laws," legal orders are also made up of a community's values and principles, and these play separate but important functions from rules in the delineation and interpretation of law.[68] It is impossible to codify rules for all situations, which is why there is a need for values and principles. Even in the

---

[63] Bill 25, *An Act to amend the Education Act and the Inuit Language Protection Act*, 2nd Sess, 5th Leg, Nunavut, 2019 (assented to 2020-11-10), SNu 2008, c 15.

[64] Ahlfors, *supra* note 22 at 75.

[65] *Ibid* at 76.

[66] See Frank James Tester & Peter Irniq, "Inuit Qaujimajatuqangit: Social History, Politics and the Practice of Resistance" (2008) 61:1 Arctic 48 at 55–56.

[67] Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 140.

[68] Metallic, *supra* note 1.

Canadian legal system, we would be challenged to write a comprehensive code on what it means to "respect equality" in every situation.[69] Further, judges turn to overarching principles to assist in interpretation of the law, even when dealing with established rules.[70] Simply put, interpretation is a central part of all law,[71] and enshrining meta-principles into statutes as interpretive guides in the form of preambular clauses, purpose or value statements is something that is common even in Western legal orders.[72] This is what renders the meta-principle linguistic method for Indigenous law revitalization appealing as it incorporates Indigenous law in a form that is easily understood from a Western legal perspective.[73]

The Nunavut government has also developed important infrastructure, in the form of the Department of Culture and Heritage and the Inuit Qaujimajatuqangit Katimajiit advisory body, who can assist public servants, including legislative drafters, in their understanding of IQ and Inuit societal values.[74] A further development that may assist public servants and judges interpreting statutes in Nunavut is the requirement in the new *Legislation Act* that any department or regulatory authority introducing new legislation or regulations must provide a statement setting out how Inuit societal values are integrated into the provisions of the bill or regulations.[75]

4. Sustainable Development Goals Act (NS)

Section 4 of Nova Scotia's *Sustainable Development Goals Act*, passed in 2019 (but not yet in force),[76] identifies the relevant principles that inform the rest of the *Act*:

---

[69] Friedland, "Reflective Frameworks", *supra* note 6. See also Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 139.

[70] See Ronald Dworkin, "The Model of Rules" (1967) 35:1 U Chicago L Rev 14 at 23–24. (Dworkin gives the US case of *Riggs v Palmer*, 115 NY 506, 22 NE 188 (1889) as an example. Here, the court's application of established statutory inheritance rules was challenged by the fact that the inheriting party had murdered the testator. The New York court relied on the principle, "no one shall be permitted to profit by his own fraud," to avoid what they felt would be the injustice result of applying the established rules in the circumstances).

[71] *Ibid* at 29–30.

[72] Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: Irwin Law Inc, 2016) at 189–93.

[73] See Fletcher, *supra* note 8 at 95 (Fletcher describes the approach as a form of "judicial minimalism" which "allows tribal courts to bring customary law into the modern era without creating much additional confusion as to the application of the law").

[74] See "Inuit Qaujimajatuqangit Katimajiit", online: *Department of Culture and Heritage* <www.gov.nu.ca/culture-and-heritage/programs-services/inuit-qaujimajatuqangit-katimajiit> [perma.cc/X489-E328].

[75] *Legislation Act*, SNu 2020, c 15, ss 46(2), 54(1). The Privacy Commissioner has expressly noted this would be a useful tool to aid in interpretation of IQ and Inuit societal values in the future: *Department of Human Resources (Re)*, *supra* note 28 at para 81.

[76] *Sustainable Development Goals Act*, SNS 2019, c 26 (not yet in force). The Nova Scotia government pledged that the *Act* would be proclaimed in force once the regulations under the *Act* were developed. Consultation on the regulations began in May 2021. See Premier's Office, News Release, "Province

> 4 This Act is based on the following principles:
>
> (a) the achievement of sustainable prosperity in the Province must include all of the following elements:
> **(i) Netukulimk,**
> (ii) sustainable development,
> (iii) a circular economy, and
> (iv) an inclusive economy;
> (b) the achievement of sustainable prosperity is a shared responsibility among all levels of government, the private sector and all Nova Scotians;
> (c) climate change is recognized as a global emergency requiring urgent action; and
> (d) such other principles as may be prescribed by the regulations.[77]

The definition section of the *Act* defines "Netukulimk" as follows:

> "Netukulimk" means, as defined by the Mi'kmaq, the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic well-being without jeopardizing the integrity, diversity or productivity of the environment;[78]

To my knowledge, the *Act* is the first statute of a Canadian government, outside of Nunavut, to incorporate an Indigenous legal concept using the meta-principle approach. It is not clear from the Department of Environment's website or Hansard how this specific definition of *Netukulimk* was chosen and the extent of Mìgmaq[79] involvement or consultation in relation to the definition of *Netukulimk* and its role within the *Act*.[80] The definition used is identical to the description of the concept on the website of the Unama'ki Institute of Natural Resources.[81] That

---

Begins Consultation on Climate Change, Sustainable Development Goals" (27 May 2021), online: *Government of Nova Scotia*: <novascotia.ca/news/release/?id=20210527001> [perma.cc/8VA3-76B5].

[77] *Sustainable Development Goals Act*, *supra* note 76, s 4.

[78] *Ibid*, s 2(e).

[79] There are different spellings of Mìgmaq depending on the writing system (orthography) one is using. There are currently four different writing systems used across Mìgmàgi. Here, I use the Metallic Orthography spelling of Mìgmaq except where another orthography appears in a quoted source. For more on the different writing systems, see Metallic, *supra* note 1.

[80] During the debates at the second reading of the Bill, a member of the NDP asked whether the government had consulted with the Mìgmaq and gained their permission to include the concept in the bill. She noted that she hadn't heard anything in public speeches from the government on the bill about consultations with Mìgmaq communities: Nova Scotia, Legislative Assembly, *Hansard*, 63-2, No 66 (30 October 2019) at 5020-21 (Susan Leblanc). I did not find any clear answer to her question from the government from the debates on second or third reading.

[81] See Unama'ki Institute of Natural Resources (UINR), "Netukulimk", online: *Unama'ki Institue of Natural Resources* <www.uinr.ca/programs/netukulimk/> [perma.cc/P4WN-DJ5N] (UNIR is an organization representing the five Mìgmaq communities of Cape Breton on natural resources and environmental concerns).

definition may not be exhaustive of the concept, however. Others have written about the concept having a spiritual,[82] as well as a governance dimension.[83] Work continues throughout Mìgmàgi[84] to unpack the meaning of *Netukulimk* as a Mìgmaq principle.[85]

Some have raised concerns that the inclusion of *Netukulimk* in the *Act* appears more performative than a serious attempt to meaningfully engage with Mìgmaq land and resource stewardship laws, especially when the *Act* does not stipulate mechanisms for ongoing engagement and advice from the Mìgmaq on the implementation of *Netukulimk* as a sustainability goal.[86] The NDP put forward amendments to the *Act* and NS *Environment Act* that require participation of at least one Mìgmaq representative in the official advisory body to the Minister of the implementation of the *Act*, but this amendment died on the order paper when an election was called in July 2021.[87] It remains to be seen how the government, and possibly the courts, will interpret *Netukulimk* in the *Act* once it comes into force.

5. Lobster Law (Listuguj Mi'gmaq Government (LMG), QC)

Turning now to examples of Indigenous nations in Canada who have used the meta-principle approach, we will first look at the Listuguj Mi'gmaq Government's (LMG) Lobster Law, enacted in June 2019.[88] By way of context, the Listuguj Mi'gmaq First Nation, located at the mouth of Chaleur Bay on the border between Québec and New Brunswick in the Gespègewàgi district of Mìgmàgi, has a long history of asserting and exercising jurisdiction over their fisheries.[89] They are also beneficiaries under the

---

[82] See L Jane McMillan & Kerry Prosper, "Remobilizing *netukulimk*: indigenous cultural and spiritual connections with resource stewardship and fisheries management in Atlantic Canada" (2016) 26:4 Reviews Fish Biology & Fisheries 629 at 629 (noting "Netukulimk" "embraces cultural and spiritual connections with resource stewardship", and it reflects "culturally rooted ways of being that foreground respect and responsibility in resource management").

[83] "Fishing Under Netukulimk", *The Nova Scotia Advocate* (6 October 2020), online: <nsadvocate.org/2020/10/06/fishing-under-netukulimk/> [perma.cc/3BYG-WLVL]; Naomi Metallic & Constance MacIntosh, "Canada's actions around the Mi'kmaq fisheries rest on shaky legal ground", *Policy Options* (9 November 2020), online: <policyoptions.irpp.org/magazines/november-2020/canadas-actions-around-the-mikmaq-fisheries-rest-on-shaky-legal-ground/> [perma.cc/DC9P-WA2K].

[84] "Mìgmàgi" refers to homelands of the Mìgmaq which includes what is now known as Nova Scotia, Prince Edward Island, and parts of New Brunswick, the Gaspé Coast of Québec, Newfoundland and Maine.

[85] See e.g. Metallic, *supra* note 1 (the project it describes).

[86] Sadie Beaton, "Sadie Beaton on Bill 213 at Law Amendments: Centre the wisdom and authority of Mi'kmaw laws", *The Nova Scotia Advocate* (30 October 2019), online: <nsadvocate.org/2019/10/30/sadie-beaton-on-bill-213-at-law-amendments-centre-the-wisdom-and-authority-of-mikmaw-laws/> [perma.cc/UJX3-Y43K].

[87] Bill 62, *An Act to amend the Sustainable Development Goals Act and Environment Act*, 3rd Sess, 63rd Leg, Nova Scotia, 2021 (first reading 25 March 2021).

[88] Listuguj Mi'gmaq First Nation, Law No 2019-01, *Listuguj Lobster Law* (17 June 2019) [*Lobster Law*].

[89] Stephen Cornell et al, "Making First Nation Law: The Listuguj Mi'gmaq Fishery" (August 2010), online (pdf): *National Centre for First Nations Governance*

Peace and Friendship Treaties,[90] including having a treaty right to fish for a moderate livelihood recognized in *R v Marshall*.[91] Pursuant to the Marshall Response Initiative,[92] the community has participated in both a food and commercial fishery for more than 20 years.[93] Over time, however, LMG became weary of Canada's unilateral management of the fishery, its prioritization of the economy and narrow conception of sustainability.[94] The *Lobster Law*, as an assertion of inherent jurisdiction, seeks instead to create a framework for management of Listuguj's fishery rooted in Mìgmaq social and cultural values, reflective of local and traditional knowledge, economically sustainable, ecologically responsible, accessible to community members and demonstrative of Listuguj's ability to manage, monitor and govern its own lobster fishery.[95]

The *Lobster Law* was the product of intensive community engagement that sought to collect insight, knowledge and feedback from Listuguj community members to help develop a lobster fishing plan and the lobster law.[96] According to the LMG, there were over 800 acts of participation from Listuguj community members in

<nni.arizona.edu/application/files/6514/6057/7040/Cornell_making_first_nation_law.pdf> [perma.cc/92PQ-5235].

[90] "Peace and Friendship Treaties" refer to a series of treaties of peace between the Mìgmaq and the British between 1726 and 1779. As described by James (Sa'ke'j) Henderson, they "established the transsystemic

law of the transatlantic treaty order ("Treaties"). The Mi'kmaw appellants relied on these Treaties based on retained inherent powers and rights. The Treaties structured the relationship with the British sovereign. They limited the authority of the British sovereign to its own subjects in a few coastal, lawful settlements in the ancestral territory of the Mi'kmaw Nation": see Sakej Henderson, "R v Marshall-Henderson" in Kent McNeil & Naiomi Metallic, eds, *Judicial Tales Retold: Reimagining Indigenous Rights Jurisprudence* (Saskatchewan: Indigenous Law Centre, 2020). These treaties did not involve any cession or surrender of Mìgmaq title to land.

[91] *R v Marshall*, [1999] 3 SCR 456, 177 DLR (4th) 514.

[92] Following the *Marshall* decision, the Department of Fisheries and Oceans Canada finally started negotiations with the Mi'kmaq and Maliseet communities in the Maritimes to support some access to the commercial fishery by issuing licenses to the communities and providing them boats and fishing gear: see Metallic & MacIntosh, *supra* note 83.

[93] Listuguj Mi'gmaq Government, News-PSA, "Listuguj Mi'gmaq Rangers to Oversee First Nation's Fall Lobster Fishery" (28 September 2022), online: <listuguj.ca/listuguj-migmaq-rangers-to-oversee-first-nations-fall-lobster-fishery/> [perma.cc/UCL5-4VQ6].

[94] Naomi Metallic interview of Fred Metallic, Director of Natural Resources for the Listuguj Mi'gmaq Government, 7 July 2021 ["Interview of Fred Metallic"].

[95] Listuguj Mi'gmaq Government, "Listuguj Lobster Fishing Plan & Listuguj Lobster Law Community Engagement Summary" (April 2019), online (pdf): *Listugui Mi'gmaq Government* <listuguj.ca/wp-content/uploads/2019/04/2019-04-11-LLFP-Lobster-Law-Summary-Final.pdf> [perma.cc/XR4X-2D97] at 1.

[96] *Ibid*.

creating the law.[97] Further, 97% of participants agreed that the community should exercise its right to develop, manage and enforce and govern its lobster fishery.[98] The Director of Natural Resources for LMG, Fred Metallic, with his staff, oversaw the community engagement and the development of the lobster plan and lobster law. He is a fluent Mìgmaq speaker, a Geptin (captain) of the Santè Mawiomi (Mìgmaq Grand Council, the traditional governing body of the Mìgmaq Nation), and holds a Ph.D. in Environmental Studies, which he wrote and defended entirely in the Mìgmaq language.[99] He explains that during the community engagement, he and his staff repeatedly heard the expression of core values by participants both in English and in Mìgmaq: "the principles were glaring at us."[100] He and his staff decided to express these in Mìgmaq as guiding principles with English explanations within the *Lobster Law* as follows:

> **Part III Guiding Principles**
>
> 6. This Law will be interpreted and implemented in accordance with the following guiding principles:
>
> a. *Ango'tmu'q*: "Taking care of something in a careful manner." *Ango'tmu'q* also suggests "acknowledgement" and "responsibility" when using the resources of the territory, e.g., "I take care of it." As Mi'gmaq, we acknowledge our territory, our lands, waters, and all life forms that have sustained our nation for generations;
>
> b. *Apajignmuen*: "Sharing" and "giving back" to one's community, thereby strengthening relations. Mi'gmaq customary practices, ceremonies, and feasts, as well as information sessions and meetings, are ways of giving back. *Apajignmuen* also implies having gratitude, being aware, and being grateful for what has been given to you;
>
> c. *Gepmite'tmnej*: "Respect." In caring for the lobster, we need to respect that everybody brings knowledge and has a role to play in fishery management. We need to recognize and incorporate both Indigenous and scientific knowledge into decision-making processes; and
>
> d. *Welte'tmeg*: "We agree in thought." This is a form of consensus-building to reach a shared agreement. Elders emphasize that, as Mi'gmaq, we need to work together to come to an agreement about how best to take care of the

[97] *Ibid* at 2 (these are broken down in the summary as: 115 Engagement Surveys completed; 101 Prioritization Surveys completed; 244 Student Workshop participants; 117 Community Workshop participants; 165 Community Meeting participants; and 11 Live Stream participants).

[98] *Ibid*.

[99] See Alfred Gopit Metallic, *Ta'n teligji'tegen 'nnuigtug aq ta'n goqwei wejgu'aqamulti'gw*, (PhD Thesis, York University, 2010) [unpublished] (addresses reclaiming Mìgmaq political history and having a conversation with Mìgmaq people about how they govern ourselves, their relationship with their territory, where they are as a Nation, and the challenges they face today as a collective as they try to move forward and live our values, beliefs, and philosophies).

[100] Interview of Fred Metallic, *supra* note 94.

> lobster. We can achieve *welte'tmeg* through building awareness, education, sharing, and exchange of views. *Welte'tmeg* requires that we be open to other views, experiences, and possibilities.[101]

In addition to providing definitions of these Mìgmaq principles, the *Lobster Law* also provides that the primary interpreter of these principles will be the "Listuguj Lobster Oversight Board" to be composed of six members appointed by the LMG.[102] These members should represent "the Listuguj Mi'gmaq First Nation's broad interest in the lobster fishery" including fishers, Elders, women, youth, members of Council or other community members with interest in the fisheries.[103] The responsibilities of the Oversight Board include monitoring and overseeing the implementation of the *Lobster Law* including advising LMG on the preparation of yearly lobster fishing plans and running the community consultations on these, as well as advising on the development of rules concerning monitoring, advising on amendments to the *Lobster Law*, and reviewing and advising on any violations of the law, including appropriate resolutions in keeping with Mìgmaq customs.[104] Fred Metallic explains that the rationale behind having the Oversight Board was to "keep the law alive" by continuing to engage knowledge-holders and as the best way to interpret the principles and the law.[105] He also described the importance of the role of the Oversight Board in advising on specific instances of violations of the *Lobster Law*, ensuring the emphasis in resolution is not punishment, but adherence to the core principles, such as giving back and showing respect.[106]

6. 7 Cree Principles (Aseniwuche Winewak Nation (AWN), AB)

Our final example relates to the identification, elaboration and use of seven Cree principles by the Aseniwuche Winewak Nation (AWN). Aseniwuche Winewak is a distinct Indigenous community located near Grande Cache, Alberta,[107] in Treaty 8 territory with ancestry from Cree, Mohawk (Iroquois or Haudenosaunee), Beaver, Shuswap, Sekani, Assiniboine (Sioux), Saulteaux (Anishinaabe) and Métis lineages. Their traditional territory ranges from what is now the eastern boundary of Jasper National Park to the upper Smoky River just north of the present hamlet of Grande Cache. The Aseniwuche Winewak speak a distinct dialect of Cree, reflecting their unique culture and relative isolation from other Cree peoples. Most Aseniwuche

---

[101] *Lobster Law*, *supra* note 88, s 6.

[102] *Ibid*, ss 7, 8.

[103] *Ibid*, s 8.

[104] *Ibid*, ss 9, 13, 32–33.

[105] Interview of Fred Metallic, *supra* note 94.

[106] *Ibid*.

[107] "Aseniwuche Winewak Nation", online: *Aseniwuche Winewak Nation* <www.aseniwuche.ca> [perma.cc/GB5E-JVP9].

Winewak adults speak Cree as their first language and continue to live their traditional way of life.[108]

In 2017, the Elders Council and leadership of AWN identified the following seven Cree principles to serve as the foundation in the development of their Constitution:

1) ᓀᐦᐃᔨᐤ ᐱᒪᑎᓯᐧᐃᐣ nehiyaw pimatisiwin: Cree traditional way of life
2) ᓀᐦᐃᔨᐯᐧᐃᐣ nehiyawewin: Cree language
3) ᐊᐧᐦᑯᑖᐧᐃᐣ wahkôtowin: Relatedness or interrelatedness: we are not only related to human beings, we are related to everything in Creation
4) ᒥᔪ ᐁᐧᐣᐦᑖᐧᐃᐣ miyo-wîcihtowin: Getting along well: everyone to help each other and to get along well through sharing and good will
5) ᓯᐦᑐᐢᑲᑖᐧᐃᐣ sihtoskâtowin: Supporting and pulling together to strengthen each other
6) ᒪᓇᑭᐦᑖᐧᐃᐣ manâcihtâwin: The act of respect or to be considerate, gentle, and mannerly. To mitigate or conserve something for the future
7) ᑕᐯᐧᐃᐣ tapwewin: Honesty.[109]

Over 2018-2019, graduate student, Johanne Johnson, a French-Canadian woman who had previously worked as a human resource manager and through her work had become a colleague of AWN, explored each of these principles and how they apply to the Nation as part of her Master's thesis in Native Studies.[110] Ms. Johnson conducted interviews with seven AWN Elders and knowledge holders, with the help of fluent community member, Carol Wanyandie. The Elders and knowledge holders were asked questions to elicit their understandings of the meaning behind each principle, how they have seen these principles being applied in past and present actions in their lives, and how they believed the principles should apply in the future.[111] The interviews were transcribed and each interview was provided with a transcript to review and approve before it was included in the study.[112] Ms. Johnson next transcribed and analyzed the interview data, identifying emerging themes and sub-themes from the interviews, and described these in her thesis.[113]

---

[108] *Reference re an Act Respecting First Nations Inuit and Métis Children, Youth and Families*, 2022 QCCA 185 (Factum of the Intervener Aseniwuche Winewak Nation at paras 1-2) ["Aseniwuche Winewak Nation Factum"].

[109] Johanne Johnson, *Cree legal principles to resolving employment-related issues: An applied study for the Aseniwuche Winewak Nation* (Master of Arts, University of Alberta, 2020) at 58 [unpublished].

[110] *Ibid*. See also "7 Cree Principles", online: *Aseniwuche Winewak Nation* <www.aseniwuche.ca/7-cree-principles> [perma.cc/2Y4M-J33T] ["7 Cree Principles"].

[111] *Ibid*.

[112] Johnson, *supra* note 109 at 56.

[113] *Ibid* at 56, 58–103.

Johnson describes her methodology as supplementing the Fletcher "primary rule" approach with community interviews (which she identifies as the "community/implicit law" method co-developed by Friedland and Napoleon),[114] which allows for much richer meaning and context to be ascribed to the principles.[115] Johnson's analysis also complements the community interpretations with knowledge sourced from academic writings, the majority of which originate from Cree knowledge keepers from other communities.[116] The AWN website comments that the method used by Johnson "helps everyone, fluent or not, deepen and broaden their understanding of the principles."[117]

Johnson's objective with her thesis was to see how the synthesis of these principles could provide a framework to inform AWN's employment policies. However, her (and the Elders') work continues to be used by AWN in a number of ways beyond the original intent of employment policies. The principles have assisted in the development of the community's draft Citizenship Code, have been incorporated into a Child and Family Wellbeing Policy and Cultural Connection Plan template, and can be used for AWN's future constitutional and other governance work.[118] Finally, summaries of Johnson's analysis of the seven principles, sourcing her interviews with the elders as well as other supporting sources, can be found on the AWN website, which provides an accessible way for community members and others to learn about the 7 Cree Principles.[119]

Part 2: Four categories of meta-principle implementation

Having presented these six examples, I now turn to analyzing some of the lessons to be learned from the different approaches to implementing the meta-principle method. I do this by organizing my discussion under four categories of implementation approaches that I believe the examples illustrate. The examples show approaches to identifying and interpreting meta-principles based on: (1) inherent knowledge of the decision-maker; (2) in-court evidence; (3) official ratification; and (4) advisory bodies. Some of the examples fall into more than one category. I do not intend these as exhaustive. There could well be other implementation approaches; but I believe these are helpful categories in which to think through implementation of the meta-principle method. These categories could also be relevant to the implementation of other Indigenous law revitalization methods.

---

[114] See Friedland, "Reflective Frameworks", *supra* note 6; Friedland & Napoleon, "Gathering the Threads", *supra* note 7.

[115] Johnson, *supra* note 105 at 51–52.

[116] *Ibid* at 58.

[117] "7 Cree Principles", *supra* note 110.

[118] *Ibid*; Aseniwuche Winewak Nation Factum, *supra* note 108 at para 11.

[119] "7 Cree Principles", *supra* note 110.

My discussion will also comment on some of the benefits and challenges of each approach. Common challenges include the challenge of legitimacy, in particular concerns about who should (and who should not) engage with Indigenous law.[120] From my examples, this takes the form of issues around the role of non-members (including non-Indigenous people) interpreting and implementing Indigenous law, as well as how much community engagement should inform the processes of identification, interpretation and implementation. Borrows reminds us that, while there is a role for governments and courts in the implementation of Indigenous laws, their role should not usurp the vital functions that are often best performed by Elders, families, clans, and other bodies within Indigenous societies.[121] Other challenges include practical and access to justice barriers to implementation, such as the time, costs and effort it might take to establish Indigenous law in court.

1. Inherent knowledge

Navajo Nation and *R v Itturiligaq* are interesting cases to compare in the context of judges seeking to apply meta-principles, where there is no express identification and definition in a law or policy (unlike my other examples). In such situations, the arguments to apply (and how to interpret) a meta-principle could come from the parties, or they could be raised by the judge themselves.[122] In both of these examples, the identification was judge-initiated, and the judges relied on their own inherent knowledge to interpret the meta-principle. Fletcher praised this approach for allowing courts to bring Indigenous law into the modern era without creating too much confusion as to the application of the law (a form of "judicial minimalism"),[123] but there are some challenges with this approach.

The first is the question of whether a judge who is not from the community can apply the meta-principle method. While Fletcher suggests that a fluent judge from the tribe is ideally placed to work with the meta-principle approach, he also thinks a non-fluent member judge could engage with the method. But he suggests that having a non-member judge engaging with Indigenous law can raise concerns about legitimacy from the community.[124] While the Court of Appeal in *R v Itturiligaq* did not say it rejected Justice Bychok's interpretation of IQ because he was not an Inuk, their overturning his ruling, citing the need for direct evidence or advice from the Inuit community, could leave the impression that his identity did weigh in on their decision (the Court of Appeal did not indicate one way or another). The question of who is a legitimate interpreter of Indigenous law is difficult. On the one hand, some people

---

[120] See generally Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 165–74; Friedland, "Reflective Frameworks", *supra* note 6.

[121] Borrows, *Canada's Indigenous Constitution*, supra note 7 at 178–79.

[122] See Fletcher, *supra* note 8 at 83 (observing that it is rare for parties or their lawyers to cite tribal custom in the courts).

[123] *Ibid* at 42.

[124] *Ibid* at 28–29.

might reflexively say that only members of an Indigenous nation in an Indigenous court can engage with its laws, as Fletcher suggests. Friedland points out that these engrained feelings about who should and should not speak about Indigenous laws reflect a reasonable distrust rooted in a long and painful history.[125] On the other hand, restricting active engagement with Indigenous laws to members in an Indigenous court may unduly limit the reach of Indigenous laws and perpetuate their historic denial and erasure. Most Indigenous communities in Canada currently do not have their own courts or alternative dispute resolution process and so even disputes that are purely internal to the community are heard in Canadian courts, often by non-Indigenous judges.[126] Further, many of the legal disputes Indigenous peoples have are against Canadian governments and, for the time being at least, these are heard in Canadian courts.[127] A position that maintains that only community members may directly engage with Indigenous laws doesn't necessarily preclude a Canadian judge from making decisions in relation to Indigenous law, but it means their role is much more passive. It would mean the judge would be required to treat the Indigenous law like a law from a foreign country. The Ontario Court of Appeal has rejected the idea that Indigenous law should be conceived or treated as foreign law.[128]

Further, practically speaking, treating Indigenous law as foreign law entails that the meaning of Indigenous meta-principles could *only* be established exclusively by expert witnesses in court.[129] While there have been some proposals from

---

[125] Friedland, "Reflective Frameworks", *supra* note 6 at 16. See also Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 169–70.

[126] See Angelique EagleWoman, "Envisioning Indigenous Community Courts to Realize Justice in Canada for First Nations" (2019) 56:3 Alta L Rev 669. See also Jonathan Rudin, *Indigenous Peoples and the Criminal Justice System: A Practitioner's Handbook* (Toronto: Edmond Publishing, 2019) at 235-51. John Borrows argues that it is imperative that more Indigenous judges should be appointed to the bench in all common law and civil law jurisdiction, and it is especially important to have representation at the Supreme Court of Canada: Borrows, *Canada's Indigenous Constitution, supra* note 7 at 215–18.

[127] There have been long been calls for an alternative to the courts for addressing Aboriginal rights and Indigenous human rights claims: see Larry Chartrand, "A Section 35 Watchdog: Furthering Accountability of Federal, Provincial and Territorial Governments to Aboriginal Peoples" (Paper delivered at the Governance, Self-Government and Legal Pluralism Conference in Hull, Quebec, 23-24 April 2003) [unpublished]. Call for Justice 1.7 of the National Inquiry into Missing and Murdered Indigenous Women was for the establishment of a National Indigenous and Human Rights Ombudsman, as well as a National Indigenous and Human Tribunal: Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place – The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, (Report), vol 1b (Vancouver, Privy Council Office, 2019) at 181. The *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s 6(2)(b) requires Canada to develop an action plan on implement the UN Declaration on the Rights of Indigenous Peoples that includes monitoring, oversight and recourse measures. The Inuit Tapiriit Kanatami has urged that this should result in the establishment of an Indigenous Human Rights Commission: "Position Paper—Establishing an Indigenous Human Rights Commission Through Federal UN Declaration Legislation" (June 2021), online (pdf): *Inuit Tapiriit Kanatami* <www.itk.ca/establishing-an-indigenous-human-rights-commission-through-federal-un-declaration-legislation> [perma.cc/7G4P-AGH6].

[128] *Beaver v Hill*, 2018 ONCA 816 at para 17.

[129] See CED 4th (online), *Conflicts or Law*, "Characterization of the Legal Issue: Proof of Foreign Law" (III.4) at § 101, §108 ("Foreign law is a factual matter which requires proof in the same manner as other

Indigenous scholars that the testimony of elders and knowledge-holders should be treated as expert evidence, because this is preferable to the *status quo*, where Indigenous oral history evidence is often treated as hearsay (discussed further below), I do not understand these scholars as intending that this should be the only way Indigenous law comes before the courts. Treating Indigenous law as foreign law would also imply that Canadian judges are under no obligation to learn or become familiar about Indigenous law, something that the Truth and Reconciliation Commission, and some Indigenous law scholars, have insisted is necessary for meaningful reconciliation and decolonization.[130] More than one prominent Canadian judge has publicly acknowledged that members of the Canadian judiciary have a 'duty to learn' Indigenous law.[131]

Further, Friedland and Napoleon have emphasized that the most important quality for engaging with Indigenous laws is having an "insider" or internal perspective of the Indigenous legal order.[132] This does not mean having to be a member of the Indigenous group,[133] but rather, as I understand it, approaching the exercise of engagement with a group's legal order with a certain set of commitments and mindset. While I do not intend this as an exhaustive list, the writing on this to-date suggests that an insider perspective is one that (1) sees that Indigenous peoples were and are

---

questions of fact. Foreign law must be pleaded and proven by the party who relies upon it. In the absence of any evidence of the foreign law, the court presumes it to be the same as the *lex fori* [home jurisdiction]" ... "Foreign law is normally proven by oral evidence of an expert witness or affidavit of an expert witness").

[130] See Canada, Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, (Report), (Ottawa: Truth and Reconciliation Commission of Canada, 2015) at 16, 215, 255–60 (The TRC has said that "[e]stablishing respectful relationships … requires the revitalization of Indigenous laws and legal traditions," and in this regard has called for the training of all lawyers and law students in Indigenous laws at Call to Action 27 and 28, as well as calling for the establishment of Indigenous law institutes for the development, use and understanding of Indigenous laws). See also Borrows, *Canada's Indigenous Constitution*, *supra* note 7; Friedland, "Reflective Frameworks", *supra* note 6; Friedland & Napoleon, "Gathering the Threads", *supra* note 7; Val Napoleon & Hadley Friedland, "An Inside Job: Engaging With Indigenous Legal Traditions Through Stories" (2016) 61:4 McGill LJ 725 [Napoleon & Friedland, "An Inside Job"].

[131] See Chief Justice Lance Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (Paper delivered at the Continuing Legal Education Society of British Columbia, November 2012) [unpublished]. See also Chief Justice Beverley McLachlin, PC, "Keynote Address" (delivered at the Annual Conference of the Canadian Institute for the Administration of Justice, Saskatoon, 16 October 2015) [unpublished] (Former Chief Justice Beverley McLachlin called for "all members of the judiciary" to have access to education and materials about Indigenous legal traditions. She framed her call as a critical, national "access to justice" measure, which must necessarily mean having concepts of Indigenous justice and the legal processes of achieving justice at the "Canadian justice table"); Justice Robert J. Bauman, "A Duty to Act" (delivered at Canadian Institute of the Administration of Justice Annual Conference: Indigenous Peoples and the Law, Vancouver, 17 November 2021) [unpublished].

[132] See Friedland, "Reflective Frameworks", *supra* note 6 at 7; Napoleon & Friedland, "Gathering the Threads", *supra* note 7 at 27–28; Napoleon & Friedland, "An Inside Job", *supra* note 130 at 734, 741–48.

[133] Friedland, "Reflective Frameworks", *supra* note 6 at 29 ("To be clear, legal scholarship from an internal viewpoint does *not* refer to the legal scholar's Indigenous descent or membership in a specific Indigenous community prior to engaging with an Indigenous legal tradition").

reasoning peoples with reasonable social and legal orders, (2) discusses Indigenous law in the present tense and does not see it as relegated to the past, (3) thinks about Indigenous laws as particular responses to universal human problems,[134] and (4) engages with Indigenous law as *law*, including engaging in analysis and synthesis of that law as legal scholarship.[135] Taking an insider perspective should also involve a commitment to learning about the worldview and intellectual life of Indigenous peoples, not just descriptive facts about their existence (e.g., where and how they lived, contemporary statistics, etc.);[136] as well as exercising humility,[137] being open and flexible in one's thinking,[138] being conscious of power dynamics within both Indigenous and broader societies,[139] and avoiding romanticism and fundamentalism when thinking about Indigenous law.[140]

If we accept that it is possible that Justice Bychok has an insider perspective of Inuit law (which his biography suggests he has been working to acquire), it could still have been reasonable for the Court of Appeal to overturn his decision, not because of his identity as a non-Inuk engaging with Inuit law, but because judges can reasonably disagree on the meaning of legal principles (the justices of the Supreme Court of Canada frequently disagree in their interpretation of law). Even as an "insider," it was fair for the NUCA to question his analysis because he did not weigh power dynamics and the vulnerable position of Inuit women as part of his analysis of IQ. I propose this is a preferable way of understanding the NUCA's decision than understanding the decision as having rejected Justice Bychok's interpretation of IQ based on his identity. This is also supported by the fact that the Court of Appeal did not insist on any evidence of IQ had to be admitted in the form of expert evidence as foreign law. But it is clear the Court of Appeal wanted Justice Bychok to provide greater support for his interpretation, suggesting he should have gotten the advice of the Inuit community or heard direct evidence, which leads to the second challenge with this approach.

---

[134] See Val Napoleon & Hadley Friedland, "Indigenous Legal Traditions Core Workshop Material" 2011/2015 [unpublished] at 2; Hadley Friedland, "Navigating through Narratives of Despair: Making Room for the Cree Reasonable Person in the Canadian Justice System" (2016) 67 UNBLJ 270 [Friedland, "Narratives of Despair"].

[135] See Friedland, "Reflective Frameworks", *supra* note 6 at 29–30 (Friedland discusses how taking an internal viewpoint "refers to a specific *type* of legal scholarship" one that allows the learner "to access, understand and apply laws—in class, in our exams, and eventually in legal practice").

[136] See Basil H Johnston, "Is That All There Is?: Tribal Literature" (1991) 128 Can Literature 54. See also Friedland, "Narratives of Despair", *supra* note 134.

[137] See Lindsay Borrows, "Dabaadendiziwin: Practices of Humility In A Multi-Juridical Legal Landscape" (2016) 33:1 Windsor YB Access Just 149.

[138] See Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 35–46. See also John Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016).

[139] Emily Snyder, Val Napoleon & John Borrows, "Gender and Violence: Drawing on Indigenous Legal Resources" 48 UBC L Rev 593.

[140] *Ibid*. See also Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 10–11.

A second legitimacy challenge with this approach is the fact that it is the judge alone who decides the meaning of the meta-principle. It has been noted that the inherent knowledge approach opens up the possibility of "boundless indeterminacy of meaning":[141] the judge draws from their own knowledge and may not cite any sources or authorities in support of their interpretation. When this happens, it has been argued that this approach does little to advance useful scholarship and engagement with a meta-principle.[142] The judge is essentially decreeing the meaning of the meta-principles without engaging with or being in conversation (actual or intellectual) with elders, knowledge-holders, community members, scholars, lawyers and leaders, and this raises legitimacy issues. Even if the judge is from the community or takes an insider perspective, nonetheless, such an approach may have somewhat of an authoritarian or fundamentalist flavour.[143]

While I think implementation approaches that involve a greater amount of actors participating in the identification and interpretation of Indigenous laws garners the greatest legitimacy, I would be reluctant to assert the "judge applying inherent knowledge" approach should never be used. I can imagine situations where this is the only practical option for Indigenous laws to be applied and so using this implementation approach would be a matter of access to justice. There may well be situations where supporting written sources might not be available, or the parties might not be able to lead expert or advisory evidence because of costs, timing or unavailability of knowledge-holders. Most of Justice Bychok's decisions where he has applied IQ have been in the criminal sentencing context. It does not appear that the Nunavut government has made this area a priority in articulating relevant IQ principles to criminal sentencing. Offenders, especially Indigenous offenders, are also unlikely able to afford putting forward experts (in many cases, Indigenous offenders are represented by legal aid services,[144] who often have limited resources).

2. In-court evidence

In *R v Itturiligaq*, the Court of Appeal identified "direct evidence from those tasked with interpreting and applying [IQ]" as one of the appropriate ways IQ evidence ought to have come before the court.[145] What form would such direct evidence need to take?

---

[141] Friedland, "Reflective Frameworks", *supra* note 6 at 22.

[142] *Ibid* at 18.

[143] See Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 46–48 (Borrows' discussion of his concern about the use of positivistic laws without drawing on other sources of law).

[144] In a survey of legal aid plans from 2019-2020, for the 9 out of 12 jurisdictions that track self-identification data for Indigenous clients, it appears that Indigenous clients make up 24% of those receiving full criminal law representation. This is significant, considering that Indigenous peoples only make up 4.9% of the population. See Department of Justice Canada, "Legal Aid in Canada 2019-2020" (1 November 2021), online: *Government of Canada* <www.justice.gc.ca/eng/rp-pr/jr/aid-aide/1920/p1.html#t6> [perma.cc/7Y3D-ATZG] (comparing Tables 6 and 16).

[145] *Itturiligaq* NUCA, *supra* note 26 at para 78.

One obvious form could be having a fluent elder or other knowledge holder from the community called as a witness on the meaning of an Indigenous meta-principle.

There can be challenges with Indigenous witnesses giving in-court evidence. Often in court hearings, Indigenous elders' and knowledge holders' testimony has been treated as factual evidence, and, where based on orally transmitted knowledge (which language tends to be), their knowledge had been treated like hearsay (an out-of-court statement) and, therefore, presumptively inadmissible subject to recognized exceptions.[146] This has often led to a devaluing of important evidence from Indigenous witnesses.[147] However, both John Borrows and Karen Drake have argued that where an Indigenous elder or knowledge holder is providing evidence about Indigenous law, they are in fact providing expert opinion evidence, and so their testimony should be treated according to procedural rules respecting expert testimony as opposed to hearsay.[148]

Even as expert testimony, however, Fletcher sees challenges with this way of bringing Indigenous law into the courts. One issue is the problem of presenting one community member's view as the authoritative expert may be misleading: "Reasonable minds may differ on customs and traditions."[149] This raises the potential of having a "battle of expert witnesses" which, in Fletcher's experience, has resulted in preventing the application of Indigenous law in tribal courts.[150] He also suggests that it may be impractical to tap the knowledge of tribal speakers during litigation.[151] Subjecting elders and knowledge holders to direct and cross-examination, in the adversarial litigation context, and questioning their knowledge is often experienced as a demeaning and harmful process as it is so fundamentally inconsistent with how elders are treated in Indigenous communities.[152] As a means of being responsive to

[146] Karen Drake, "Indigenous Oral Traditions in Court: Hearsay or Foreign Law?" in Karen Drake & Brenda L Gunn, eds, *Renewing Relationships: Indigenous Peoples and Canada* (Saskatoon: Native Law Center, 2019) at 281–308. See also Brenda L Gunn, "The Federal Court Aboriginal Bar Liaison Committee as a Mode of Reconciliation: Weaving Together Indigenous Law, Common Law, and International Human Rights Law" in *Renewing Relationships: Indigenous Peoples and Canada* (Saskatoon: Native Law Center, 2019) at 310–17.

[147] See e.g. Robin Ridington, "Fieldwork in Courtroom 53: A Witness to *Delgamuukw v BC*" (1992) 95 BC Studies 12. See also Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 67–72.

[148] See Borrows, *Canada's Indigenous Constitution*, *supra* note 7; Drake, *supra* note 146, 299 (Drake analogizes knowledge-holder evidence of Indigenous law to foreign law. However, she also emphasizes that the rules of foreign law should not be applied wholesale and in an unaltered form to Indigenous traditions. Any rules adopted to assess Indigenous laws must accommodate their unique features).

[149] Fletcher, *supra* note 8 at 92.

[150] *Ibid* at 17, 28.

[151] *Ibid* at 38.

[152] See Gunn, *supra* note 146 at 314–17.

this problem, the Federal Court of Canada has adopted practice guidelines on Elder testimony on oral history to attempt to minimize some of these effects.[153]

To be even more responsive to the recognition and revitalization of Indigenous law, the Federal Court has also developed a framework for the appointment of neutral advisors to advise the court regarding Indigenous law or traditions, which it is currently in the process of piloting.[154] The Federal Court Rules provide for the appointment of an "assessor," defined as someone "to assist the court in understanding technical evidence, or to provide a written opinion in a proceeding."[155] The assessor rules stands separate from the expert evidence rules and do not entail direct questioning from the parties. Rather, communications with the assessor happen directly with the judge.[156] Through using these rules, the framework intends that a neutral advisor could assist the court in matters related to reception, interpretation, or application of Indigenous Law.[157] The framework also provides that when the Court is considering appointing such an assessor, it may first seek the advice of an Indigenous Law Advisory Committee made up of persons who are knowledgeable in Indigenous Law (appointed by the Federal Court) for their aid in identifying an appropriate assessor in a given case.[158]

I am not aware of any other court that has similar guidelines, and not all provinces or territories have similar assessor rules. However, the inherent jurisdiction of courts to appoint *amicus curiae* (a friend of the court) could likely be used to achieve something similar. This is something to which other courts in Canada should give attention.[159] While the Federal Court's specific jurisdiction situates it to hear matters potentially involving Indigenous law regularly, as work on revitalization continues, we will see Indigenous law issues arise in many more contexts, at all levels of court.

---

[153] *Ibid*.

[154] Justice Paul Flavel, "Federal Court Aboriginal Law Bar Liaison Committee" (Presentation given at an Online Symposium for CBA Aboriginal Law, 10 June 2021) [unpublished] at 12.

[155] *Federal Courts Rules*, SOR/98-106, s 52(1).

[156] *Ibid* at 52(3)–(5). However, the judge must disclose any questions submitted to the assessor in any opinion provided, with an opportunity for the parties to make any submissions thereon. On the use of assessors, see *Porto Seguro Companhia De Seguros Gerais v Belcan S.A.*, [1997] 3 SCR 1278, 153 DLR (4th) 577 (SCC). For a discussion on its use in a First Nations case, see *Henry v Roseau River Anishinabe First Nation*, 2017 FC 1038 at paras 32–36.

[157] Flavel, *supra* note 154 at 18–19.

[158] *Ibid*.

[159] See *Ontario v Criminal Lawyers' Association of Ontario*, 2013 SCC 43 (the Supreme Court confirmed that the appointment of *amici curiae* is an inherent jurisdiction of superior courts, as well as an implied power of statutory courts. The Court provides a test for appointing *amici* at paras 47–48. The ultimate and primary purpose of *amici* are to help trial judges on issues of law or facts, where the trial judge is of the view that an effective, fair and just decision cannot be made without such assistance. There are many scenarios to which *amicus* may apply. The class of scenarios is not closed). For a helpful summary on the law relating to *amici*, see *Morwald-Benevides v Benevides*, 2019 ONSC 1136 at para 20.

With ongoing developments in the recognition of Indigenous self-government,[160] we may well also see the proliferation of Indigenous courts within Indigenous communities.[161]

Beyond having elders and knowledge holders testify to their personal knowledge, there is a growing body of scholarship (articles, books, and dissertations) about different nations' Indigenous legal orders written by Indigenous law scholars,[162] as well as reports developed out of partnerships between communities and academics and organizations committed to supporting Indigenous law revitalization.[163] Some of these have incorporated the meta-principle approach into their analysis of a nations' laws, weaving this with other methods of law revitalization, as Johanne Johnson did in her work with AWN.[164] While Fletcher was skeptical about using the work of anthropologists and ethnohistorians since this can be questioned by communities for being biased and lacking legitimacy,[165] he was writing in the US in 2007 before there was a significant uptick in writing on Indigenous law by legal scholars, who are often from the communities they write about, or have close connections to these communities. While not decisive or binding sources of information about a community's laws, these can be helpful and persuasive sources for judges to consider.

---

[160] See *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 (which upholds federal legislation recognizing self-government, noting that the inherent right to self-government is a generic right protected under s 35 of the *Constitution Act, 1982*). The case is on appeal to the Supreme Court of Canada.

[161] By this I mean courts appointed under the jurisdiction of Indigenous governments. Currently, there is only one inherent jurisdiction Indigenous court operating in Canada, that of the Akwesasne First Nation, which borders New York State, Ontario, and Quebec. For further information about the Court, see "Justice", online: *Mohawk Council of Akwesasne* <www.akwesasne.ca/justice/> [perma.cc/F5HQ-RWJ6]. EagleWoman argues for the need for First Nations in Canada to have tribal courts like their American counterparts: EagleWoman, *supra* note 126. See also *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24, s 18(1)–(2) (which recognizes the ability of Indigenous governing bodies to self-govern in relation to child and family services and this includes the authority to provide for dispute resolution mechanisms, which could include an Indigenous court).

[162] See e.g. Young, *supra* note 8; Morales, *supra* note 7; Lindberg, *supra* note 7; Ottawa, *supra* note 7.

[163] See e.g. "Revitalizing Indigenous Laws", online: *Accessing Justice and Reconciliation Project* <indigenousbar.ca/indigenouslaw> [perma.cc/KE2T-5LQY] (seven community reports written for the 2012 "Accessing Justice and Reconciliation Project", a partnership between the University of Victoria, Indigenous Law Research Unit, the TRC Commission, the Indigenous Bar Association, and the Law Foundation of Ontario, and Indigenous communities and organizations); Shuswap Nation Tribal Council & Indigenous Law Resource Unit Team, "Secwépemc: Lands and Resources Law Research Project" (July 2018), online (pdf): *University of Victoria* <www.uvic.ca/law/assets/docs/ilru/SNTC%20Law%20Book%20July%202018.pdf> [perma.cc/T9RB-WXXZ] [Secwépemc Lands and Resources] (the Secwépemc Lands and Resources Law Research Project undertaken by the Indigenous Law Resource Unit at the University of Victoria and Secwépemc Nation and the Shuswap Nation Tribal Council); Hadley Friedland et al, "Porcupine and Other Stories: Legal Relations in Secwépemcúlecw" (2018) 48:1 *Revue générale de droit* 153.

[164] See e.g. Ottawa, *supra* note 7; Secwépemc Lands and Resources, *supra* note 163.

[165] Fletcher, *supra* note 8 at 82.

3. Official ratification

This implementation approach refers to when governments (Nunavut and Nova Scotia), including Indigenous governments (Listuguj Mi'gmaq First Nation and Aseniwuche Winewak Nation), incorporate Indigenous law meta-principles and definitions or explanations into their statutes, policies and other government documents. In this sense, leadership officially "ratifies" the particular principles and interpretations that they wish to have apply to areas within their jurisdiction.[166]

In both *Department of Human Resources (Re)* and *S (J) v Nunavut (Minister of Health and Social Services)*, we see Nunavut judges and tribunals (the Privacy Commissioner) use definitions and discussions of IQ principles set out in government of Nunavut publications.[167] The Privacy Commissioner also mentions his intention to use statements from the government, required under the NU *Legislation Act*, that explain how Inuit societal values are incorporated into new law and regulations for the same purpose in the future.[168] Similarly, Fletcher, explains a rule of court of the Hoopa Tribe that accepts "written" law as binding law, which he explains as follows:

> "If the traditional Tribal law has been acknowledged by a legal writing of the Tribe the court will apply the written law." Tribal custom is "written" if the Hoopa tribal council has taken action that amounts to a ratification of the custom:
>
> > Evidence that a traditional law is written includes written reference to a traditional law, right, or custom in a Tribal resolution, motion, order, ordinance or other document acted upon by the Tribal Council. Anthropological writings and publications, and personal writings are not evidence that the traditional law is written, but may be presented as persuasive or supporting evidence that the traditional law or custom exists.[169]

Notably, the Hoopa rule distinguishes academic and personal writings on Indigenous law from "written law." It appears that the Tribal Council would have to take some steps to include or 'ratify' findings from academic or personal writing to convert these to government-sanctioned statements of Indigenous law. This appears similar to how the Nunavut government draws on the documents on IQ and Inuit societal values developed in workshops and meetings with elders, as well as resources prepared by the Qaujimajatuqangit Division of the Department of Culture and Heritage and incorporates these into statements, policies or other government documents. Another illustration would be how the AWN leadership drew on Johanne Johnson's

---

[166] I do not intend "ratifies" here in the sense of a community-wide referendum. That may be one way a government decides to garner community support for a law, but it is not the only way.

[167] *Department of Human Resources (Re)*, *supra* note 28; *S (J)*, supra note 59.

[168] *Department of Human Resources (Re)*, *supra* note 28 at para 81, referring to *Legislation Act*, *supra* note 75, ss 46(2), 54(1).

[169] Fletcher, *supra* note 8 at 70 [emphasis added].

dissertation (itself based on interviews with community elders) to produce statements on the meaning of their 7 Cree Principles and incorporated these principles into their Child and Family Wellbeing Policy.

The most formal expression of this ratification occurs when governments include an Indigenous meta-principle, possibly with its definition, within a statute. Illustrations include the multiple Nunavut statutes that expressly include IQ principles and Inuit societal values, the inclusion of *Netukulimk* in the NS *Sustainable Development Goals Act*, the Mìgmaq guiding principles defined in the Listuguj *Lobster Law*, and the AWN's inclusion of its 7 Principles in its Constitution and draft *Citizenship Law*.

It is also possible that a government could use policy or guidelines to supplement a definition of an Indigenous meta-principle that appears in a statute. There are ways to draft definition sections in order to ensure that it is not intended as exhaustive of the meaning of a concept.[170] Where a definition is non-exhaustive, administrative interpretations of the concept can be relied upon to assist in defining a concept.[171] This could be useful, for example, where a case or issue has revealed a need for extrapolation on how an Indigenous principle might apply in specific circumstances. For example, Alfhors suggests that educators and administrators need greater guidance on how IQ principles apply in the context of education.[172] The Qaujimajatuqangit Division of the Department of Culture and Heritage, working with the Inuit Qaujimajatuqangit Katimajiit advisory body, could prepare a document giving specific guidance and examples of IQ application in schools.

The "official ratification" approach seems to be at its best when it includes multiple levels of engagement from elders and knowledge-holders, community members and leadership, and academics, lawyers or technicians that can assist in the identification, articulation and analysis and synthesis of principles. Such robust engagement lends credibility to the law-making process. The examples that reflect this is the work with elders and knowledge holders on IQ in Nunavut, the 7 Cree Principles at AWN and the Listuguj *Lobster Law*. The sites of intersection between the different participants provide many opportunities for debate and deliberation on the meaning of the meta-principle(s), increasing the likelihood that the majority of participants support the interpretation(s), thereby increasing its legitimacy. Where the "ratification" approach may fall short (at least from the point of view of legitimacy),

---

[170] Statutory definitions can be exhaustive or not exhaustive. An exhaustive definition is usually introduced by the word "means" followed by definition that comprises the sole meaning of the word. A non-exhaustive definition is usually introduced by the expression "includes" followed by a directive which adds to the meaning of the defined term. See Sullivan, *supra* note 72 at 78–80.

[171] *Ibid* at 283 (Sullivan cites the basic rule governing judicial use of administrative materials stated by Dickson J. in *R v Nowegijick*, [1983] 1 SCR 29, 144 DLR (3d) 193 (SCC) at para 37: "Administrative policy and interpretation are not determinative but are entitled to wait and can be an 'important factor' in case of doubt about the meaning of legislation").

[172] Ahlfors, *supra* note 22 at 68–69.

however, is where this rich and layered engagement is lacking. It is hard to determine with certainty, but it seems like this may be the case with the use of *Netukulimk* in the NS *Sustainable Development Goals Act*, where it is unclear whether the Nova Scotia Mìgmaq participated in a specific process with the Mìgmaq on the inclusion of the meta-principle in the *Act*, and the definition used may have simply been pulled from a website.

The "official ratification" approach avoids the "boundless indeterminacy" and legitimacy concerns that can arise with the inherent knowledge approach since we effectively have the government of a community endorsing specific Indigenous meta-principles and their meaning. It also avoids the issues that come with having to prove Indigenous law on a case-by-case basis in the courts. Further, this process provides not only guidance for courts, but also for public servants. Simply put, it makes Indigenous law accessible by having the government commit to it in writing. However, it may not always be appropriate for a community to write down their laws and insisting on this could be seen as imposing more Western forms of law-making on Indigenous communities.[173] Communities should be free to write their laws down if that is what the community wants; equally, they should be entitled to maintain their laws orally if they see fit. Borrows also reminds us that we should be careful that Indigenous law's formal implementation by governments should not undercut Indigenous civil society and should not cause us to discount the role of non-governmental organizations, families or individuals in creating, interpreting, and enforcing Indigenous law.[174]

4. Advisory bodies

Some of these examples show us yet another way to implement Indigenous meta-principles, which is the appointment of advisory bodies made up of community members, including elders, to advise decision-makers on how to properly implement Indigenous meta-principles. A clear example of this is the Oversight Board created in the Listuguj *Lobster Law*, composed of a diverse collection of community members.[175] The Oversight Board is tasked with monitoring and oversight of implementation of the *Lobster Law*, providing advice to the LMG on annual lobster plans and changes to the law, as well as advising on the proper resolution in situations where someone has violated the *Lobster Law*.[176] We also saw this with Nunavut's *Wildlife Act* where the Minister is required to appoint an advisory committee of elders to review methods and technologies of harvesting wildlife in the context of IQ and advise the Minister on those it considers safe and humane.[177]

---

[173] See Borrows, *Canada's Indigenous Constitution*, *supra* note 7 at 142–49.

[174] *Ibid* at 178–79.

[175] *Lobster Law*, *supra* note 88, ss 7–10.

[176] *Ibid*, s 9.

[177] *Wildlife Act*, *supra* note 39, s 160.

With the *Wildlife Act* and *Lobster Law*, the appointment of advisory boards appears to occur alongside the official ratification approach.[178] This layering of implementation approaches is another way to supplement statutory definitions of meta-principles, and for decision-makers to get community advice about the application of a principle to particular fact-scenarios, as in the case of the Oversight Body providing advice on how to respond to violations of the *Lobster Law*. In this regard, Fred Metallic described one goal of having the Oversight Body as a way to "keep the law alive."[179] His comments also suggest that this way of obtaining community-informed interpretations lend legitimacy to the ongoing application of the law.

Even where a statute does not explicitly provide for the appointment of an advisory body to advise on the interpretation of Indigenous law, there is nothing preventing a government (Canadian or Indigenous) from assembling such a body to advise it on decision-making in accordance with Indigenous laws. It is also possible that judges may be able to assemble and draw on such bodies to assist them in their deliberations on Indigenous law. In the criminal context, judges have long been drawing on sentencing circles to gain community advice on appropriate sentencing, without specific provision for such circles in the *Criminal Code*.[180] Courts have held that the jurisdiction to order a sentencing circle comes from a judge's power to issue sentence.[181] By analogy, a jurisdiction to assemble a body of community members to advise on the application of a community's law would emanate from the judge's power to decide and interpret the law. The judge would not be abdicating its jurisdiction to the body, as the final decision would still lay with the judge, though one would hope, the decision would be informed by the community's advice. This approach could be adopted whether the decision-maker is from the community or not (e.g., a tribal judge or a Canadian judge). Such an approach might be a way to supplement the inherent knowledge approach and give the judge's conclusions more legitimacy. Indeed, in *R v Itturiligaq*, the NUCA suggested that obtaining "the advice of the Inuit community" was a possible alternative to obtaining direct evidence on the meaning of IQ.[182] This may be a preferable approach to calling expert witnesses or *amicus curiae* or assessors,

---

[178] See e.g. *Corrections Act*, *supra* note 48 (An example of an advisory board that advises of Indigenous law principles in the absence of definitions in their enabling statute is the Inuit Societal Values Committee created by the recent. They can provide direct advice on matters, but more generally they are empowered to receive and hear submissions and suggestions from individuals and groups concerning the incorporation of Inuit perspectives, Inuit societal values and Inuit traditional knowledge in the corrections system, recommend policies and practices to better incorporate Inuit perspectives, recommend new correctional programs or amendments to existing correctional programs to better incorporate Inuit perspectives, Inuit societal values and Inuit traditional knowledge in the corrections system).

[179] Interview of Fred Metallic, *supra* note 94.

[180] See Rudin, *supra* note 123 at 207-31.

[181] See *R v Munson*, 2003 SKCA 28 at para 70; *R v McDonald*, 2012 SKQB 158 at paras 7–11; Jon Nadler, "Sentencing Circles A Way To Envision Justice as a Community Responsibility" (delivered at 30th Annual Criminal Law Conference, Ottawa, 13-14 October 2018), 2018 CanLIIDocs 10836 at 7.

[182] *Itturiligaq* NUCA, *supra* note 26 at para 78.

because all of the latter options entail a person giving their individual opinion versus a group's views that would incorporate group dialogue and deliberation on the application of an Indigenous law principle in practice.

Conclusion

In this article, I have provided a detailed examination of six examples of implementation of the meta-principle method. The various examples of how the linguistic meta-principle method is being applied by law-makers and decision-makers in different jurisdictions, both Indigenous and non-Indigenous, is an exciting development in the ongoing renaissance of Indigenous laws. Already, we are seeing a diversity in approaches and there are several lessons we can take away from these examples. From these examples, at least four categories of implementation approaches emerge: (1) inherent knowledge of decision-maker; (2) in-court evidence; (3) official ratification; and (4) advisory bodies. The categories present different considerations, risks and benefits for engagement with Indigenous law, depending on the Indigenous law in question and how it is sought to be used. This shows us that there is no "one-size fits all" approach for implementation; it truly depends on context. However, these examples show us that communities and their governments have real options, and precedents, to not only begin to revive their laws, but also to put them into practice. This article represents only an early foray into analyzing implementation approaches around Indigenous laws. Likely, the approaches, considerations, risks and benefits of each implementation category raise additional questions in the minds of readers. Strategies for interpretation and argument of Indigenous laws, as well as how to meaningfully engage community members in deliberations on Indigenous law, are areas for future scholarship that would make important contributions to this area.